Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 78.

THE WASHINGTON MARKET COMPANY, *Appellant*,

vs.

THE DISTRICT OF COLUMBIA, SETH L. PHELPS, ET AL., COMMISSIONERS OF THE DISTRICT OF COLUMBIA,

AND

JAMES GILFILLAN, TREASURER OF THE UNITED STATES.

In Error to the Supreme Court of the District of Columbia.

APPELLANT'S BRIEF

By WILLIAM BIRNEY,
its Attorney.

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IN THE

Supreme Court of the United States.

No. 78.

In error to the Supreme Court of the District of Columbia.

APPELANTS' BRIEF.

THE CASE.

The object of the bill is to cancel and annul two tax-lien certificates issued against Reservation 7, in the City of Washington, for certain street improvements, and to enjoin each of the defendants from selling or attempting to sell said reservation on account of the assessments upon which said certificates were based.

The bill charges that the United States has been, both before and since May 20, 1870, the owner of said Reservation; and that the appellant, under a charter of that date, (16 Stat. at Large, 124), became the tenant for years of said property. (Rec. 2.)

I. *Assessment for B street.*—It charges also, that, in 1871, the Board of Public Works caused B street north, adjoining said property to be improved at a cost of $14,262.87, and assessed this sum against the United States as owner, and the said sum was "paid in full by the Assistant Treasurer of the United States to the Treasurer of the said Board of Public Works, July 25, 1873," and the amount has never been refunded or demanded. (Rec. 4.)

That the Board of Public Works afterward, in 1874, assessed against appellant, for the same street improve-

ment, $4,402.45, and issued against said reservation tax-lien certificate, No. 5,247, for that sum. (Rec. 5.)

That said certificate is now held by the Treasurer of the United States, defendant. (Rec. 6.)

That said assessment is "*fraudulently excessive*," the proper amount chargeable being, $2,079.44, and no more. (Rec. 7.)

II. *Assessment for Seventh street.*—The bill charges that the Board of Public Works afterward caused Seventh street adjoining Reservation 7, to be improved at a total cost of $8,557, and assessed against the United States as owner of said reservation, $7,426.16, being five-sixths of said cost; and said charge against the United States afterward, July 25, 1873, was paid in full by the United States to the Treasurer of the said Board. (Rec. 7),

That, afterward, September 3, 1875, the District Commissioners assessed against appellant, for the same improvement, $1,691.85, and on refusal to pay, issued against said reservation, tax-lien certificate No. 8,286, for that sum; which certificate is held by the Treasurer of the United States, (Rec. 8) and that said amount is in excess of the amount authorized by law, which was $1,426.16, and no more.

October 31, 1878. Bill filed and restraining order and subpœnas issued.

November 1, 1878. Service of writs on all the defendants, including the United States Treasurer. (Rec. 15.)

November 2, 1878. Service accepted for all the defendants by A. G. Riddle. (Rec. 16.)

November 9, 1878. Answer of District of Columbia filed. (Rec. 17.)

December 21, 1878. Decree *pro confesso* against District Commissioners and James Gilfillan. (Rec. 22.)

April 2, 1879. Decree making absolute *pro confesso*. (Rec. 23.)

This enjoins said defendants, "and each of them, their

successors in office and their agents, attorneys and employees," as prayed in the bill.

April 7, 1879. Motion to set aside *pro confesso*. (Rec. 26.)

April 26, 1879. Above motion overruled, "*with the consent of said solicitor for said defendant.*" (Rec. 27.)

June 7, 1880. Leave to withdraw answer and demurrer granted to the District of Columbia, defendant. [No demurrer found.]

October 6, 1885. Decree of Special Term sustaining demurrer and "that the said bill of complaint be, and it hereby is, dismissed."

Appealed. (Rec. 30.)

March 8, 1886. Decree of General Term, affirming decree below. Appeal allowed. (Rec. 32.)

March 29, 1886. Appeal perfected to the Supreme Court of the United States. (Rec. 33.)

ASSIGNMENT OF ERRORS.

In sustaining the decree of the Equity Court, the General Term *erred* in holding by necessary implication:

1st. That the payment in full by the United States, of the special assessment for the *improvement on B street* did *not* satisfy said assessment. (Rec. 5.)

2d. That the payment in full by the United States of the special assessment for the improvement *on Seventh street* did *not* satisfy said assessment. (Rec. 7.)

3d. That the Board of Public Works could, without statutory authority, make a reassessment for street improvements. (Rec. 5.)

4th. That the Commissioners of the District of Columbia could, without statutory authority, make a reassessment for a street improvement which had been completed by the Board of Public Works. (Rec. 8.)

5th. That each of the tax lien certificates in question was issued on a valid assessment. (Rec. 6 and 8.)

6th. That a special assessment admitted by the demurrer to have been "*fraudulently excessive and exorbitant*," was lawful. (Rec. 6 and 7.)

And 7th. That the case did not fall within the equity jurisdiction of the court.

ADMISSIONS OF PAYMENTS.

In regard to the *B Street improvement*, the demurrer admits:

1st. That the full cost thereof was "assessed against the United States as owner of all the property adjoining the said improvement." (Rec. 4.)

2d. That said cost was "with full knowledge of the facts on his part and on the part of the other auditing officers of the United States, paid in full by the Assistant Treasurer of the United States to the Treasurer of the Board of Public Works, on July 25, 1873." (Rec. 5.)

3d. That said amount has never been repaid to the United States." (Rec. 5.)

4th. That, "notwithstanding the said payment of the whole cost of the said improvement by the United States as aforesaid," &c. (Rec. 5.)

These admitted averments in the bill establish the fact of the payment in full by the United States of the assessment for the B street improvement.

In regard to the *Seventh street improvement* the demurrer admits:

1st. That five-sixths of the total cost, being all the cost for the improvement adjoining Reservation 7 was "assessed against the United States as owner of said Reservation."

2d. That the said charge for the work aforesaid afterward "with full knowledge of the facts, was paid in full by the United States to the Treasurer of the Board of Public Works."

3d. That, "notwithstanding the payment aforesaid, the Commissioners," &c.

These admitted averments establish the payment in full by the United States of the assessment on Reservation 7 for the Seventh street improvement.

I.—First Proposition.

The original assessments for the two alleged street improvements have been fully satisfied by payment.

Points.

(*a*) Reimbursement of actual cost in fair proportion to benefits received is the theory on which private property is taxed for the improvement of public streets.

Assessments for street improvements, under the laws in force in the District of Columbia from 1871 to 1875, inclusive, were for *payment of cost*. Clause 4, sec. 37, of the organic act, gives power to assess "a reasonable proportion of the *cost* of the improvement, not exceeding one-third of such *cost*." The first section of the Legislative Assembly act of August 10, 1871, provides for an official statement of the *cost* of each street improvement, and that "an assessment, based upon said statement, shall be made," &c. Appendix B.

Payment of a third of *actual cost* of work done might be enforced, and no more.

(*b*) Assessments were to be made upon "the *property* adjoining," (Organic Act, sec. 37, clause 4,) act of August 10 1871, sec. 1, 2, and 3. The tax-lien certificates were made "against the *property* assessed." (*Ib.*, sec. 3.)

And payment was enforced by the sale of "the property." (*Ib.*) The claim for the cost was not against the person but the real estate.

(*c*) But notice of "the amount assessed" was to be given to "each *proprietor* of property adjoining," * * * and

"if *he be a non-resident*, to his *tenant* or agent," (act of August 10, 1871, sec. 2.) The bill (par. 3) sets forth that the United States was the owner of the property adjoining, and that complainant was its "tenant." These facts are admitted by the demurrer. In giving notice to the United States, and not to complainant, the Board of Public Works followed the law.

(*d*) The United States, as owner of the fee, was entitled to make payment of the assessment.

"Any right which in law or equity amounts to an ownership in the land, any right of entry upon it, to its possession or enjoyment, or any part of it which can be deemed an estate in it, makes the person the owner, so far as it is necessary to give him the right to redeem."

Dubois *vs.* Hepburn, 10 Peters, 23.

It is questionable whether, under the organic act, the complainant, owner of franchises and a tenant only of the real estate, was a "property holder," or, under the act of August 10th, was a proprietor. It is not questionable that the United States was both. *Query:* Could a term of years have been sold under the assessment laws?

(*e*) At the time in question, it was the policy of the United States to make appropriations to pay the cost of all improvements on such parts of Washington city streets as bordered on public reservations.

(See appropriation acts of 1870–'1,–'2,–'3, 16 St. at L. 300, 301, 504; 17 St. at L., 361, 364–'5, 518–'9, 526.)

(*f*) But if it be held that the "*tenant*" in this case was the "proprietor," then the payment by the United States extinguished the lien.

"Payment of the tax, which the act requires to be made *by the owner*, need not necessarily be made by the owner in

person. It is enough that it be made by him, acting through some friend or agent, compensated or uncompensated; any person, in short, willing to act in his behalf, and whose act is not disavowed by him."

The statutory law bound the United States to pay the cost of street improvements adjoining public squares, reservations, open spaces or other property owned by the Government.

"SEC. 15. That the Commissioner of Public Buildings, or other person appointed to superintend the UNITED STATES disbursements in the City of Washington shall *reimburse* to the said corporation a just proportion of any expense which may hereafter be incurred, in laying open, *paving*, or otherwise *improving* any of the *streets* or *avenues* in front of, or adjoining to, or which may pass through or between any of the public squares or reservations." * * * *Washington City Charter of 1820.*

By act of May 20, 1826, the provisions of the above section were extended to "public open spaces." 4 Stat., 186.

Section 3 of act of May 5, 1864, amending charter of Washington City, provides:

"That in all cases in which the streets, avenues or alleys of the said city pass through or by any of the property of the United States, the Commissioner of Public Buildings shall pay to the duly authorized officer of the corporation the just proportion of the expense incurred in improving such avenues, street or alley, which the said property bears to the whole cost thereof." * * * 13 U. S. Stat., 69.

"2. Such a special assessment is extinguished by payment, even though made by a person who does not own the property assessed."

Danenhowever *vs.* District of Columbia, 17 Wash. Law Rep., 147.

person. It is enough that it be made by him, acting through some friend or agent, compensated or uncompensated; any person, in short, willing to act in his behalf, and whose act is not disavowed by him."

Bennett *vs.* Hunter, 9 Wall., 326.

"It is enough if it" [the payment of tax] "be made by any person for him, on the ground that an act done by one for the benefit of another is valid if ratified, either expressly or by implication, and that such ratification will be presumed in *furtherance* of justice."

Tacey *vs.* Irwin, 18 Wall., 551.

"A tender of money in behalf of an infant, made by his uncle, the father being dead, but the mother living, was good, although the uncle had not then been appointed guardian."

Brown *vs.* Dysinger, 1 Rawle, 408.

"Payment of the tax by the owner, or by any one netitled to make it, is an absolute defeat and termination of any statutory power to sell." (Cooley on Taxation, 322.)

Dougherty *vs.* Dickey, 4 W. & S., 146.
Jackson *vs.* Morse, 18 Johns, 441.
Derr *vs.* Terrell, 3 Hawks, 283.
Rowland *vs.*Doty, Har. Ch., 3.
Johnson *vs.* Scott, 11 Mich., 232.
Rayner *vs.* Lee, 20 Mich., 384.
Walton *vs.* Gray, 29 Iowa, 440.
Wallace *vs.* Brown, 22 Ark., 118.
Hunter *vs.* Cochran, 3 Pa. St., 105.
Montgomery *vs.* Meredith, 17 Pa. St., 42.
Aukeny *vs.* Albright, 20 Pa. St., 157.
Laird *vs.* Heister, 24 Pa. St., 452.
Curry *vs.* Hinman, 11 Ill., 420.
Morrison *vs.* Kelley, 22 Ill., 610.
Sprague *vs.* Cocnan, 30 Wis., 209.

Any mere volunteer may pay the tax if he chooses.

Reading *vs.* Finney, 73 Pa. St., 467.

Martin *vs.* Snowden, 18 Gratt., 100.

Kinsworthy *vs.* Austin, 23 Ark., 375.

And certainly if the proper officer should receive payment, any question concerning the right to make it would be precluded.

Cooley on Taxation, 323.

Payment of a debt by one who is not a party to the contract, although made without the assent of the debtor, extinquishes the debt.

Harrison *vs.* Hicks, 1 Porter, 423.

27 Am. Dec., 638.

"Where one makes a payment in the name and on behalf of another without authority, it is competent for the debtor to adopt and ratify the payment."

Add. on Con., sec. 338.

Co. Little., 206 b; Belshaw *vs.* Bush, 11 C. B., 191; 22 L. J. C. P.,'24; Inst. Lib., 3, tit. 29, 1.

In the case from 9th Wallace, the Supreme Court decided that, although the statute required the tax to be paid "by the owner," *any person* might pay it for him.

Authority of the person paying need not be proved.

Abb. Tr. Ev., 800; Sanford *vs.* McLeary, 3 Paige, 117.

Tacey *vs.* Irvin, 18 Wall., 549.

9 Wall., 326.

Gernon *vs.* McCan, 23 La. Ann., 84.

(*g*) Under the organic act and the act of August 10, 1871, the only legal reason for issuing the tax-lien certificates was the non-payment of the assessment. The District Commis-

sioners were authorized to collect from private property adjoining the improvement one-third of the cost. When that amount was paid in, the reason for issuing ceased; and the attempt by the Board and by the Commissianers to collect the debt twice was illegal, extortionate, and oppressive.

"If the money be paid, no matter by whom, before a sale is made, the reason for making a sale ceases and the authority to make it ceases also."

Martin *vs.* Snowden,
Bennett *vs.* Hunter,
Portner & Recker *vs.* Cazenove,
} 18 Grattan, 148.

"Where one enters under a sale for taxes where the taxes had been paid previously to the sale, he enters without right."

Hunter *vs.* Cochran, 3 Penn. St., 105.

"Payment of taxes destroys right of sale."

Montgomery *vs.* Meridith, 17 Penn. St., 42.

"An owner of land may defeat the sale by showing that the taxes were paid before the sale."

Aukeny *vs.* Albright, 20 Penn. St., 157.

"Payment of the tax, whether by the owner or any one else, will avoid the sale."

"Nay, if tax be paid, though not by him, it will avail him," &c.

Reading *et al. vs.* Finney *et al.*, 73 Pa. St., 467.

"If the tax is paid or tendered by any person before the land is sold, the sale is void and of no effect," &c.

Martin *vs.* Snowden, 18 Grattan, 101.

"A treasurer's sale of unseated land is void when it appears that the tax for which it was sold was actually paid, although the County Commissioner misunderstood the pay-

ment and applied it to another object. The error of the officer will not deprive the owner of the land."

Dougherty *vs.* Dickey, 4 Watts & S., 146.

(*b*) The main question involved in this case has been decided by this Court. For nearly ten years the law has been settled in this District, as I claim it in behalf of complainant.

In Alexander *vs.* Dennison *et al.*, Commissioners, &c. (2 McArthur, 562), complainant alleged, among other things:

"That the aggregate cost of said improvements had been assessed and collected from the United States Government," [and others,] "and any further collections on account of said improvements would realize largely in excess of their cost," &c. (P. 563.)

The Court says:

"It is also said that complainant should at least pay what is due in order to obtain relief from the whole tax." * * * "But in the case before us, it is alleged that the whole costs of the improvements on New York Avenue have been collected from the United States."

After quoting admissions in the answer, the Court says:

"Now here it is admitted that an appropriation considerably exceeding the whole expenditure for the improvements on New York avenue has been paid to the District. This would undoubtedly inure to the benefit of persons owning the adjoining lots. The payment of a tax to the proper officers extinguishes the indebtedness and relieves the property upon which it is assessed; and it is the duty of the Government to make the proper application," &c. * * * "So far as the lot is concerned, the lien no longer exists."

"To allow the land to be sold for a tax that has been collected," &c., would be to cast a cloud upon the title of real estate.

The injunction was made permanent and is in force.

But Alexander, who was protected by this Court from extortion, did not present so strong a case for relief as the one at bar. He established, it is true, that Congressional appropriations to pay the cost of all the New York avenue improvements and exceeding the amount of the cost had been paid to the District; but he did not establish, as complainant does, that a specific assessment for the cost of each improvement had been made by the District authorities against the United States Government property and fully paid by that Government as proprietor, on itemized bills duly certified, proved, audited and controlled, out of appropriations covering these and similar improvements, and in pursuance of a settled policy.

(*i*) The dissolution of the injunction in this case would compel the complainant to pay some eight thousand dollars, more or less, to the District of Columbia for improvements once paid for; but it would not protect complainant against a demand by the United States for the money paid by that Government in 1873. Having paid that money under no mistake of facts, the Government can not recover it from the District; but, if the extinguished lien was valid against complainant's term of years, what is to prevent the owner, who may have had paid for the protection of tenant as well as of the fee, from demanding reimbursement from the tenant? In that case the District of Columbia would make clear profit of some $8,000 above costs of improvement, and the Market Company would pay a claim twice over. It is against this extortion for purely speculative purposes that the complainant asks relief.

II.—Second Proposition.

Special improvement taxes are levied under enactments only, and *a reassessment cannot be made without statutory authority.*

The demurrer admits an original assessment against the United States as owner for each of the improvements (Rec. 4, for B St., Rec. 7, for 7th St.) and a reassessment in each case against the same property as owned by the appellant. (Rec. 5 and 8.)

The law provides that *whenever* any of the street improvements to be made by the Board of Public Works shall be *completed*, a statement of the costs thereof shall be prepared by said board and filed in their office; and *immediately thereafter* an assessment based upon said statement shall be made. * * * (1st Ses. Leg. Assembly, Act of August 10, 1871, Appendix B.)

This first assessment, made *immediately* after completion of improvement and statement of cost, is the only one authorized in the law, the second and third sections of which provide for notice to owner within ten days (sec. 2), and on his neglect or refusal to pay for thirty days, for the issue, "*immediately thereafter*" of certificates of indebtedness against the property. (Sec. 3.)

The provisions of law in regard to special improvement taxes must be strictly observed.

"A lien created by the terms of a statute authorizing the assessment and collection of a tax exists and attaches only according to such terms and conditions as are prescribed by the statute creating it."

Lyon *vs.* Alley, 130 U. S., 177.

See also French *vs.*. Edwards *et al.*, 13 Wall., 506.

"Reassessments can only be made when authorized by statute." (Welty's Law of Assessments, sec. 197.) This principle is "applicable to street assessments." (Welty, sec. 197*a*.)

A reassessment cannot be made where the original assessment is valid, nor to make up deficiencies. (*Idem*, sec.

FIFTH PROPOSITION.

The Decree below was too broad in its terms.

Nothing was before the court, except the sufficiency of the bill of complaint as to the demurrant. The District of Columbia was a *pro forma* defendant. No case was stated against it in the bill, and it was not *named* in the prayers for relief. It had no pecuniary interest in the subject-matter of the suit (*Leg. Assembly Act*, May 29, 1873) and could do no act which complainant wished to prevent by injunction. (*Leg. Assem. Act*, Aug. 10, 1871.) It may be that the District should not have been made a defendant, but this error of misjoinder should have had no other effect than the dismissal of the bill *as to it*.

Seymour vs. Freer, 8 Wall., 218.

The enlargement of the decree so as to dismiss the bill as to the real defendants—the trustee of the lien certificates and the commissioners designated by law to sell the property on his request—and so as to set aside, *as to them*, a final decree of injunction (Rec., 23) from which they had not appealed, which the court had formally refused, in 1879, to vacate (Rec., 27) which had been in force nearly seven years, and which was not before the court for its action—was, it is submitted, an error in practice.

Phillips vs. Negley, 117 U. S. Rep.

198; see also sec. 305, and Cooley on Taxation, ch. 10, clause 6, under "Reassessments."

The power to assess is exhausted by its first exercise.

O'Neale *vs.* Thornton, 6 Cranch, 53.

The Board of Public Works had no power to reassess or revise. (Appendix A.)

The District Commissioners had none to reassess and none to revise before the Act of June 19, 1878 (see Appendix C), several years after their reassessment, which is complained of in the seventh paragraph of the bill. (Rec., 8.)

III.—Third Proposition.

The admitted fraud vitiates the reassessment.

The demurrer admits not only that the reassessment was "fraudulently excessive and exorbitant," but that the exact amount of the fraudulent charge was the excess of $4,402.45 over $2,079.44. (Rec., 5 and 7.)

IV.—Fourth Proposition.

The case was one of equity jurisdiction.

On its face, each of the two reassessments was a valid original assessment which the Board of Public Works was competent to make; and each of the lien certificates was, on its face, issued in accordance with law. The satisfaction by payment and the fraudulent character of the genuine original assessments were facts outside of the record and were grounds of equity jurisdiction.

Respectfully submitted,

William Birney,
Of Counsel for Appellant.

APPENDIX.

A.

[Sections 3, 4, and 6, of Organic Act, of February 21, 1871.]

3. "The Board of Public Works shall have entire control of and make all regulations which they shall deem necessary for keeping in repair the streets, avenues, alleys, and sewers of the city, and all other works which may be intrusted to their charge by the Legislative Assembly or Congress.

4. "They shall disburse upon their warrants all moneys appropriated by the United States, or the District of Columbia, or collected from property holders, in pursuance of law, for the improvement of streets, avenues, alleys, and sewers, and roads and bridges, and shall assess, in such manner as shall be prescribed by law, upon the property adjoining and to be especially benefitted by the improvements *authorized by law* and *made by them*, a reasonable proportion of the cost of the improvement, not exceeding one-third of such cost, which sum shall be collected as all other taxes are collected.

6. "All contracts made by the said Board of Public Works shall be in writing, and shall be signed by the parties making the same, and a copy thereof shall be filed in the office of the Secretary of the District.

B.

[Legislative Assembly, Act of August 10, 1871.]

AN ACT prescribing the mode of assessment for special improvements, and providing for the collection thereof. Approved August 10, 1871.

"*Be it enacted by the Legislative Assembly of the District of Columbia*, That whenever any of the improvements mentioned or referred to in section thirty-seven of the act entitled 'An act to provide a government for the District of Columbia,' approved the twenty-first day of February, one thousand eight hundred and seventy-one, shall be completed, a statement of the cost thereof shall be prepared by the Board of Public Works, and be filed in the office thereof; and immediately thereafter an assessment, based upon said statement shall be made, as provided for in said section of said act, which assessment shall be collected by the said board in the same manner as other taxes of the District of Columbia are now or may hereafter be authorized to be collected.

"SEC. 2. *And be it further enacted*, that within ten days after making an assessment, the Board of Public Works shall give, or cause to be given, written or printed *notice* to each proprietor of *property adjoining* and specially benefitted by any improvement of the amount assessed against the same if he be a resident of the District of Columbia, and if he be a non-resident, to his tenant or agent, requiring the amount to be paid within thirty days from the date of such notice, and a return of such service shall be made to the said board, with the proof of the manner in which the same shall have been served, and be filed among its records. And the service of such notice shall, in all cases, be either personal on said proprietor, agent or tenant, or by pasting or placing a copy thereof on the property, as aforesaid, against which the assessment exists.

"SEC. 3. *And be it further enacted*, That if any person or

persons, notified as aforesaid, shall neglect or refuse to pay the amount assessed against his or their property as aforesaid, after the expiration of thirty days, the said Board of Public Works shall immediately thereafter issue certificates of indebtedness against the property assessed as aforesaid, which certificates shall bear interest, until paid, at the rate of ten per centum per annum; and until paid, the assessment and certificate shall remain and be a lien upon the property on or against which they shall have been issued; and if the said assessment shall not be paid within one year, the said board shall, upon the application of the holder of the certificate of indebtedness, proceed to sell the property against which the assessment and the certificate exist, or so much thereof as may be necessary to pay said assessment, such sales to be first duly advertised daily for three successive weeks in the regular issue of some newspaper published in the District of Columbia, and to be made by said board at public auction to the highest bidder; and a deed shall be given by the governor, countersigned by the secretary of the District of Columbia, which deed shall be deemed and held to be a good and perfect title to any property bought at any sale hereby authorized; *Provided*, That the owner of such real estate shall have the right to redeem the property so sold by paying the amount of purchase money, and twenty per centum thereon within two (2) years from the date of sale."

* * * * * * * *

Laws Dist., pt. 2d, p. 31.

C.

AN ACT to provide for the revision and correction of assessments for special improvements in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Com-

missioners of the District of Columbia be, and they are hereby, directed to enforce the collection, according to existing laws, of all assessments for special improvements prepared under an act of the Legislative Assembly of August tenth, eighteen hundred and seventy-one, as charges upon the *property benefitted* by the improvements in respect to which said assessments were made: *Provided*, That upon complaint being made to the Commissioners, within thirty days from the passage of this act, of erroneous or excessive charges in respect to any of said assessments which *remain unpaid*, said Commissioners are hereby authorized to revise such assessments so complained of, and to correct the same; and where certificates of assessment have been issued, they shall issue to the holder of such certificate a drawback certificate for the amount of such *erroneous* or *excessive* charges, which certificates shall be received at any time in payment of assessments for special improvements, and they shall be redeemed in the manner prescribed for the redemption and purchase of certificates, as provided by an act of the Legislative Assembly of May twenty-ninth, eighteen hundred and seventy-three, entitled "An act for extending the time of payment of special assessments, and for other purposes," after the provisions for the purchase and redemption of certificates named in the act shall have been fully carried out.

Approved June 19, 1878. (20 Stats., 166.)